UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES–GENERAL

Case No. CV 94-2401 HLH (Rcx) Date June, 24, 1996

Aizawa v. *The Sovereign State of Japan, et al.*

DOCKET ENTRY:

PRESENT:

HON. HARRY L. HUPP, JUDGE
Milli Borgarding, Deputy Clerk
C. Mizell, Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Edward Ord ✓

ATTORNEYS PRESENT FOR DEFENDANTS:

Christopher Kelly
Wm. Bradford ✓

PROCEEDINGS:

Defendants' Motion to Dismiss;
Review of order of Magistrate Judge

ORDER (also, if applicable, findings and memorandum opinion):

The objection to the order of the Magistrate Judge allowing additional time to respond to the complaint is overruled. The motion to dismiss of all named defendants is granted without leave to amend on the ground of sovereign immunity and the action is dismissed by order signed and filed this date.

The objection to the order of the Magistrate Judge allowing defendants time to respond to the complaint is overruled. The decision to allow additional time could not by any stretch of the imagination be termed an abuse of discretion or "clearly erroneous." Plaintiff's claim that this request for default should have been entered before the order was granted is equally without merit. A request for default which does not set forth the identity of the defendants as to whom default is requested is hardly deficient for mere technical errors, allowing relation back to the date of the original request. In any event, sovereign immunity is a question which must be considered even if default had been entered and not set aside, an unlikely event.

On the merits, the complaint shows conclusively that sovereign immunity has not been waived, and that no amended complaint could cure that defect.

Plaintiff's complaint is that he was arrested based on the request of Japan for extradition to serve a criminal sentence, which request was repeated twice. The extradition requests were denied on the basis that the extradition treaty only calls for extradition for a crime which would also be a crime in this country. Finding that the essence of the Japanese crime committed by plaintiff was the payment of campaign workers in violation of Japanese law, extradition was refused because such was not a crime in this country.

The complaint plainly comes under the sovereign immunity provisions of the Foreign Sovereign Immunities Act (FSIA). The waiver of sovereign immunity for a non-commercial tort does not include "malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights" (28 USC § 1605(a)(5)(B)). This directly excludes plaintiff's first, second, and third claims. The remaining claims (infliction of emotional distress and negligence) plainly arise from conduct which is an excluded tort and are therefore themselves excluded (*Sheehan* 9Cir'90 917

F2d 424; *Thomas-Lazear* 9Cir'88 851 F2d 1202). In addition, the alleged torts are excluded from waiver because they arise from the sovereign's discretionary function (28 USC §1605(a)(5)(A)).

The other claimed grounds of waiver have no merit. Defendants did not waive sovereign immunity by making an appearance without filing a motion or answer. Requesting extradition from the United States courts does not waive sovereign immunity. *Siderman* 9Cir'92 965 F2d 699 cannot be interpreted to say that any extradition request in regular form pursuant to treaty is a waiver of sovereign immunity for a subsequent malicious prosecution action.

The action is dismissed.